

## 48A C.J.S. Judges § 333

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 3. Determination of Objection to Judge

## § 333. Record and costs in disqualification proceeding

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(4)

**The record should show the facts authorizing the judge to yield jurisdiction to another because of disqualification; costs may be assessed as provided by statute.**

Where a judge yields jurisdiction to another because of a disqualification, the record should show affirmatively the facts which authorized the act.<sup>1</sup> It must show the disqualification of the trial judge, not a predecessor.<sup>2</sup> However, it has also been held that the grounds of disqualification need not be matters of record unless their existence is questioned.<sup>3</sup> If the judge decides to proceed with the case, the judge is required to state on the record why his or her impartiality could not reasonably have been called into question.<sup>4</sup>

### ***Costs.***

Where the statutes provide that the party making the affidavit shall be charged a fee to be taxed as costs, the party may, in the discretion of the court, either pay the fee or file a bond, and the court should use reasonable discretion in giving the party time to do so.<sup>5</sup>

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### Footnotes

- 1 Mo.—Autenrieth v. Schaff, 271 Mo. 248, 196 S.W. 1129 (1917).
- Vt.—In re State Aid Highway No. 1, Peru, 133 Vt. 4, 328 A.2d 667 (1974).
- Minute entry sufficient**
- Cal.—Noorthoek v. Superior Court of San Luis Obispo County, 269 Cal. App. 2d 600, 75 Cal. Rptr. 61 (2d Dist. 1969).
- 2 Tex.—Poole v. Mueller Bros. Furniture & Carpet Co., 80 Tex. 189, 15 S.W. 1055 (1891).
- 3 Tex.—Bates v. Casey & Swasey, 61 Tex. 592, 1884 WL 8828 (1884).
- Harmless error**
- Fla.—Tillman v. State, 44 So. 2d 644 (Fla. 1950).
- 4 Pa.—Com. v. Schwartz, 267 Pa. Super. 170, 406 A.2d 573 (1979).
- Vt.—In re State Aid Highway No. 1, Peru, 133 Vt. 4, 328 A.2d 667 (1974).
- 5 Okla.—Deninger v. Gossom, 1915 OK 372, 46 Okla. 596, 149 P. 220 (1915).

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